

Board of Adjustment

Minutes



**Main Library, Saguaro Room - 2nd Floor
March 10, 2009**

Board members Present:

Dianne von Borstel, Vice Chair
Scott Thomas
Garrett McCray
Linda Sullivan
Greg Hitchens
Judah Nativio

Board members Absent:

Mike Clement, Chair (excused)

Staff Present:

Gordon Sheffield
Angelica Guevara
Tom Ellsworth
Wahid Alam
Mia Lozano-Helland

Others Present:

Grant Olds
Allen Willis
David Birdsell
Tyler Wright
Others

The study session began at 4:39 p.m. The Public Hearing began at 5:40 p.m. Before adjournment at 6:35 p.m., the following items were considered and recorded. The recording is available upon request.

Study Session 4:39 p.m.

- A. The study session began at 4:39 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Zoning Administrator update – The Zoning Administrator provided an update of the following items:
 - The '4 for Mesa' schedule and the 7:00 a.m. – 6:00 p.m. Planning business hours were explained.
 - Case submittals are down and use of the Planning Hearing Officer will be utilized whenever possible for hearing cases.
 - Items from the Module 3 section of the Zoning Code update were reviewed.

Public Hearing 5:40 p.m.

- A. Consider Minutes from the February 10, 2009 Meeting A motion was made to approve the minutes by Boardmember Nativio and seconded by Boardmember Hitchens. Vote: Passed 6-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Hitchens and seconded by Boardmember Sullivan. Vote: Passed 6-0

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-011

Location: 2041 North Recker Road

Subject: Requesting: 1) a Substantial Conformance Improvement Permit (SCIP); and 2) a Special Use Permit (SUP); all in conjunction with the development of an automobile service station in the C-2 zoning district.

Decision: Approved with conditions.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Sullivan to approve case BA09-011 with the following conditions.

1. *Compliance with the site and landscape plans submitted, except as modified by the conditions below.*
2. *Compliance with the conditions of Zoning case Z08-74 and Design Review case DR09-03.*
3. *Replacement of the existing 6' high wall with an 8' high block wall along the southernmost 109.28 feet of the east property line.*
4. *Install screen walls or berming/landscaping along Recker Road per 11-15-4(B)10.*
5. *The retention basin shall be designed per 11-15-3(D)1-9.*
6. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
7. *Compliance with all requirements for off-site improvements or in lieu payment including right-of- way dedication.*
8. *Compliance with the findings of the potential noise impact study performed by Acoustical Services for the Emc2 Group dated 2/11/2009.*

Vote: Passed 6-0

Findings:

- 1.1 The adopted Mesa 2025 General Plan designates this site for Medium Density Residential 4-6 du/ac. This land use category permits limited Neighborhood Commercial of less than 10 acres, where deemed appropriate by the City. The entire site has recently been rezoned to C-2 in January 26, 2009 by Council. However in order to build the auto service facility with carwash the site needs Special Use Permit (SUP) and to develop with reduced setbacks as shown in the approved site plan a Development Incentive Permit (DIP) is also required.
- 1.2 The Economic Development Vision statement adopted as part of the Mesa 2025 General Plan states: To be a city that raises the standard of living and quality of life for its residents as a result of actions by business, government, and the community that attract, retain, and sustain dynamic enterprises. The proposed development allows for the retention of an existing, well-established business located in close proximity to the subject site. The request complies with the General Plan.
- 1.3 The applicant is requesting a Development Incentive Permit (DIP) to allow for the development of

**Board of Adjustment Meeting
March 10, 2009**

the Red Mountain Tire and Auto facility with car wash. The site is currently vacant, and is located between two multi residence development to the north and retail development to the south. The applicant has proposed several improvements to the site that largely comply with current Code requirements, with the exception of setbacks along adjacent developments, foundation base and parking lot landscaping.

- 1.4** It has been established that the site qualifies for a DIP, as it has all three of the following conditions: 1) the site does not exceed 2.5 acres; 2) the site has access to existing utilities; and 3) it is surrounded by properties within a twelve hundred foot radius in which greater than fifty percent of the total number of lots or parcels have been developed fifteen or more years.
- 1.5** While the site complies largely with current Code, the exceptions are the proposed setbacks along north, south and east property lines which are less than the required setbacks ices.
- 1.6** In addition to the qualifying criteria for the DIP, the proposed development for the site is consistent with the General Plan and is a permitted use as specified in the zoning ordinance. Further, the applicant has provided a degree of compliance with Code that is commensurate with or exceeds surrounding existing development. The requested deviations are necessary to accommodate the proposed development to insure that the site remains secure. Further, this proposed development has been reviewed and approved by the Design Review Board, confirming that the proposed development meets the intent of the provisions of the Design Guidelines.
- 1.7** The requested SUP would permit the proposed Red Mountain Tire and Auto facility at this location subject to finding the use consistent with the Zoning Ordinance 11-6-4 (E)

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-012

Location: 4545 South Signal Butte Road

Subject: Requesting a Modification of a Planned Area Development to allow increased roof area coverage for the development of signal family residences in the R1-6-DMP-PAD and R1-9-DMP-PAD zoning districts.

Decision: Approved with conditions.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Sullivan to approve case BA09-012 with the following conditions:

1. *Compliance with the project narrative and exhibits submitted, except as modified by the conditions listed below.*
2. *No additional roof area shall be permitted.*

Vote: Passed 6-0

Findings:

- 1.1 As noted above, the requested Minor Modification of the PAD overlay will permit roof coverage in excess of the maximum permitted within Units 9, 11, and 12 of the Mountain Horizons DMP. Specifically, the request will permit an increase in the maximum allowed roof coverage from 46% to 50%.
- 1.2 All current and proposed housing product types meet all code requirements for the site as approved through zoning case Z05-39, including all setback requirements.
- 1.3 To be approved, it must be found that the proposed minor modification is consistent with the intent of the originally approved PAD overlay. The original approval allows maximum roof area coverage of 46%. The applicant has proposed maximum roof area coverage of 50%. As justification for the request the applicant has noted that this modification will be in keeping with the intent and purposes of the City of Mesa's Residential Development Guideline by creating a more diverse and aesthetically pleasing streetscape within the community.
- 1.4 This request is consistent with recent PAD approval for Unit 14 (Z08-83) immediately south of these units. This Unit was approved with a maximum allowable roof area of 50%.
- 1.5 All product types meet the current 46% requirement on all lots. This expansion of allowable roof area is needed to accommodate options offered with the single story product on a certain number of lots within each unit. The PAD was approved on this site with an increase to the maximum allowable roof area do largely in part to the design, amenities, and ample amount of open space of the overall DMP. As proposed this increase will not alter the original intent of the approved PAD.

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-013

Location: 5255 South Power Road

Subject: Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan for the Goodwill Power Center in a C-2-PAD zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Sullivan to approve case BA09-013 with the following conditions:

1. *Compliance with the sign plan submitted except as modified by conditions listed below.*
2. *Location of the fourth attached sign for the Anchor tenant (Goodwill) to be approved by Planning Division staff prior to submittal for construction permit.*
3. *Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.*

Vote: Passed 6-0

Findings:

- 1.1 The Zoning code allows an aggregate total of 21 feet in height and 211 square feet in sign area for detached signs along Power Road.
- 1.2 The proposed Comprehensive Sign Plan identifies only one detached sign along Power road at 12 feet in height and 80 square feet in sign area.
- 1.3 The Comprehensive Sign Plan proposes attached sign area for a larger Goodwill Store, which is greater than what is allowed by current Code. Increased sign area has been justified by the scale of the building, the need for signs to be in proportion to the building elevation, the distance from Power Road, the need to direct traffic on the site and a reduction in the number of detached signs under what could be allowed by Code.
- 1.4 The staff recommended conditions of approval will allow four signs with an aggregate sign area of 200 square feet for the Major Tenant. Shop and Pad Tenants will have aggregate sign areas consistent with current Sign Ordinance, with a maximum width of 80% of the elevation.
- 1.5 The Design Review Board has previously reviewed and approved the building architecture for the overall development.

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-014

Location: 320 East Baseline Road

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to facilitate the re-development of a commercial building in the M-1 zoning district.

Decision: Approved with conditions

Summary: Grant Olds represented the case and summarized the improvements that are proposed for the site. A discussion ensued regarding conditions of approval related to a pedestrian connection; a landscape yard adjacent to the north property line; and replacement of a parking space with landscape at the south property line. Mr. Olds considered them impractical and that they created a hardship. Staff explained the reasoning and cited the Zoning Ordinance for the requirements. A brief discussion by Board members followed.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Nativio to approve case BA09-014 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions below.*
2. *Provide a method of screening all parking spaces from Baseline Road.*
3. *Provide a minimum of 9' x 18' parking spaces.*
4. *Provide a minimum of 24' wide drive aisles.*
5. *Replacement of eastern most parking space along the south property line with landscape.*
6. *A minimum of 8 parking spaces shall be maintained for customer and employee use at all times.*
7. *Screen trash enclosure from street and parking area to comply with screening standards.*
8. *Provide landscape material quantities consistent with full Code requirements within the perimeter landscape yards, foundation base at the east and south elevations of the building, and within the parking area.*
9. *Signage will be relocated out of the future right-of-way line.*
10. *Compliance with all requirements of the Design Review board.*
11. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 6-0

Findings:

- 1.1 The requested Substantial Conformance Improvement Permit (SCIP) will allow the re-development of a vacant gas station with a commercial building on an existing M-1 zoned parcel. The property owner has removed the underground storage tanks and canopy to accommodate the proposal. Building and landscape setbacks are required to be measured from future width lines on arterial streets (75-foot future right-of-way for Mesa Drive and a 65-foot future right-of-way for Baseline Road). This reduces the net developable lot area from approximately 27,670 square feet to approximately 25,000 square feet.
- 1.2 The subject parcel is less than 2.5 acres in size. While the requested deviations will allow reduction in the building and landscape setbacks from Mesa Drive and Baseline Road, the

**Board of Adjustment Meeting
March 10, 2009**

applicant is proposing a 13'9" landscape yard adjacent to Mesa Drive and 20'-6" landscape yard adjacent to Baseline Road measured from the future right-of-way line.

- 1.3** The proposed improvements to this existing non-conforming site constitute the greatest degree of compliance with current development standards that can be attained without causing or creating addition demolition at the site while accommodating the re-development of this site with a viable use. The deviations that have been requested will allow re-development of the site in a manner consistent with development at other sites throughout the city.
- 1.4** Concerns related to width of landscape yards, foundation base width, signage, the proximity of the Mesa Drive driveway to the intersection, the provision for screening devices, and a General Plan policy relating to automotive uses on arterial street intersections have been addressed by the applicant or through conditions of approval. Sufficient justification exists for the requested SCIP. The applicant has provided a site plan that meets the intent of current development standards, while allowing the re-development of a reasonably sized and economically viable building

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-009

Location: 3818 East Brown Road

Subject: Requesting: 1) a Variance to allow a detached garage addition to encroach into the required side yard setback; and 2) to allow aggregate area of all detached buildings to exceed 50% of the roof area of the dwelling in the R1-35 zoning district.

Decision: Approved with conditions.

Summary: Allen Willis, representing the owner, summarized the request and noted that this project has support from the adjacent neighbor. Boardmember Hitchens commented on the large estate size lot that is approximately six times the minimum size of a typical R1-35 residential lot. He felt that the proposed amount of roof area was appropriate for a lot of this size.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Nativio to approve case BA09-009 with the following conditions:

1. *Compliance with the site plan submitted.*
2. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
3. *If during the review of construction documents it is determined that the request does not comply with Sec. 11-13-2-B-8, the applicant will be required to make modifications to the request to comply with 11-13-2-B-8, or to request an d obtain approval for an additional variance related to the roof area calculations for detached structures.*

Vote: Passed 5-1

Findings:

- 1.1 The proposed variance was requested to allow construction of a 1,312 square foot detached garage within the required 10 foot side yard setback of the subject parcel. The proposed detached garage will encroach approximately five feet into the required 10 foot side yard setback. When encroaching into the side yard setback only, Code permits detached accessory buildings with a maximum height of eight feet (at the highest point) and maximum area of 150 square feet. To be considered a detached accessory building, a minimum six-foot separation is required from the house. As proposed, the detached garage exceeds the maximum height of eight feet, maximum size of 150 square feet, and would encroach into the 10 foot side yard setback.
- 1.2 The subject site is zoned R1-35, 4.17 acres surrounded by approximately 3 acre parcels that are also zoned R1-35 except for the parcel to the east which is has an Agriculture zoning district. The parcels within the R1-35 zoning district require a minimum of a ten-foot side yard setback with both side yards totaling a minimum of thirty-feet. The site plan submitted includes the general location of the existing home, the existing barn, a permitted addition and ramada, and the proposed detached garage. The detached garage may be permitted provided a minimum 10-foot side yard setback is maintained from the east property line.
- 1.3 The detached garage was constructed without the benefit of a building permit. While the detached garage is constructed, the Board should review this case as if it were still just a plan on

**Board of Adjustment Meeting
March 10, 2009**

paper, giving neither penalty for the construction completed without the correct authorization, nor concern for having to maintain the applicant's investment.

- 1.4** As justification for the requested variance, the applicant has noted: 1) the garage is not visible from the street view; 2) the garage is well constructed; 3) the design of the garage is very pleasing; 4) the placement of the garage was due to an effort to preserve as much of the citrus grove trees as possible; 5) the garage was placed as close to the home as possible while still allowing vehicle access to the garage and rear yard facilities; and 6) the property owner has an injury on his right foot which limits his ability to walk long distances, the placement of the garage provides an ideal walking distance for the property owner .
- 1.5** As proposed, the detached garage addition requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:
- a) There are special conditions that apply to the land of building.*
 - b) The special condition was pre-existing and not created by the property owner.*
 - c) That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
 - d) The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*
- 1.6** The subject parcel is of similar size or in some cases larger than other parcels in the vicinity. The subject parcel is of similar orientation as other parcels in the vicinity and exceeds the minimum required size for lots in the R1-35 zoning district (35,000 s.f.). The applicant has not provided sufficient justification related to ***special or unique conditions*** of the land to support the requested variance.
- 1.7** The primary justification noted by the applicant relates to self-imposed hardships, such as an existing structure, and not to unique conditions of the land that prevent compliance with setback requirements. Due to the size of the parcel, options are available to the applicant to relocate the proposed detached garage within the buildable area.
- 1.8** Sec 11-13-2-B-8 Additional provisions and exceptions for detached accessory buildings indicates that the aggregate area of all detached buildings shall not be greater than 50% of the roof area of a dwelling. Roof area is the footprint of the structure excluding eaves and overhangs. Staff has concerns with the roof area calculations provided by the applicant in the site plan. The site plan identifies the roof area of the home as 11,879 s.f. (including a permitted addition) and the roof area of all detached structures (including the proposed garage) as 5,811 s.f. (48.9%). The roof area of all detached structures visually appears to exceed 50% of the area of the dwelling. The applicant's request for a variance does not include this issue.
- 1.9** While the technical considerations typically needed are not, in the staff's opinion, present in sufficient amount to garner support for this application, it should be noted that the applicant's justifications have merit and should be duly considered by the Board while deliberating this request. The Mesa General Plan and the Citrus Sub-area Plan both call for the maintenance of existing citrus groves whenever possible as a key character feature for this part of the City. The applicant has indicated that the maintenance of citrus trees was a key consideration in the decision to locate the garage as proposed. In addition, the parcel, which in excess of 4 acres, has a considerable number of trees ("half-an-orchard of trees") that screen the detached garage from the public street, so the encroachment of the garage is not visible to the general public. Finally, it

**Board of Adjustment Meeting
March 10, 2009**

should be noted that the immediate neighbor most affected by the closer proximity of the garage has not indicated any objection to the smaller setback. While this is not technically considered a justification of a variance, it is an indicator of whether the smaller setback is considered “detrimental” to that neighboring property owner.

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-010

Location: 1245 North Hillcrest

Subject: Requesting a Variance to allow a garage addition to encroach into the required rear and side yards in the R1-9 zoning district.

Decision: Approved with conditions

Summary: David Birdsell, the property owner, summarized the request and provided additional information. Boardmember McCray voiced a reluctance to approve a 0' side yard setback that would completely block access to the rear yard. The Board discussed an alternate plan that would provide a two-car garage in a tandem design. This tandem garage can be no wider than 16 feet and meet the minimum rear yard setback of 25 feet. Mr. Birdsell agreed to work with Planning staff on the specifics of a tandem garage.

Motion: It was moved by Boardmember McCray, seconded by Boardmember Hitchens to approve case BA09-010 with the following conditions.

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*
3. *Applicant will work with Planning staff on the specifics of a 2-car tandem garage that is not wider than 16 feet.*

Vote: Passed 6-0

Findings:

- 1.1 The proposed variance involves an allowance to construct a 1,008 square foot garage within the side yard of the subject parcel. The proposed garage will encroach 9' into the required 9' side yard setback. The current setbacks for the existing home are: 38' in the front, 24' in the rear, 8' for the south side yard and 1.42' (research reveals no record of a building permit issued for this carport for the north side yard). The home owner wants to build a 2-car garage attached to the house to the north side of the house, replacing the existing carport (approximately 21 feet wide by 18 feet long). The proposed addition does not meet the required side yard setback (minimum 9' to maintain total 17 feet for both side yards). The proposed garage will also encroach into the required side yard resulting in a zero-foot setback.
- 1.2 The proposed 2-car garage, together with the existing home, will result in an aggregate roof area (lot coverage) of approximately 25 percent of the entire lot. This is within the maximum coverage maximum of 40 percent of the lot for this zoning district.
- 1.3 The existing home is in the R1-9 zoning district. The minimum setback requirements are; front 25', min. 7' side, total of 17', street side 10', rear 25'.
- 1.4 As justification for the requested variance, the applicant has noted:

**Board of Adjustment Meeting
March 10, 2009**

- a) The property currently does not have an enclosed two-car garage as do most properties in the area.
 - b) There is an existing two-car carport attached to the residence that sits on the north side of the residence running right up to the existing property line. This carport was existing when the current owners purchased the property and later obtained a building permit from the city to remodel the residence.
 - c) The carport is helpful but because of rising crime in the neighborhood, the vehicles parked under the carport are exposed to vandals and thieves. The current property owners have had four break-ins during the last 5- years while living on the property.
 - d) As the surrounding neighborhoods deteriorate (now the surrounding properties are considered a Mesa Opportunity Zone) the owners desire more security and protection of their vehicles and their personal safety upon entering and exiting the residence.
 - e) When the property was originally purchased there was an existing garage on the north side of the home, however the garage was too small to accommodate the owner's vehicles, in addition, there was too small of turning radius into the garage to make it feasible for use by the property owners.
 - f) The garage was useless to the property owners as it could only accommodate one small vehicle. The property owners have a SUV that is required for work purposes and these vehicles would not fit in the garage. The owners obtained a building permit to remodel the property and utilize the garage as part of the remodel.
 - g) There is an existing two car carport that is attached to the residence that sits on the north side of the existing property line. This carport is feasible; however, almost every home in the neighborhood has two car garage.
 - h) The owner does not believe the situation is self-imposed as the existing garage that was remodeled was useless to the property owners due to the lack of size and turning radius to park their vehicles in the garage. Because the carport is attached to the residence and was existing at the time of purchase and the time obtaining a previous building permit, the owners believe that building a two car garage to replace the existing carport will create safety now required for the property owners.
- 1.5** As proposed, the garage structure addition requires the granting of a variance. The Board of adjustment must find the following items are present to approve a variance:
- a) There are special conditions that apply to the land or building.
 - b) The special condition was pre-existing and not created by the property owner.
 - c) That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
 - d) The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.
- 1.6** The subject parcel is of similar size (16,923 s.f) and orientation as other parcels in the vicinity for lots in the R1-9 zoning district (9,000 s.f.). The applicant did not provide sufficient justification related to ***special or unique conditions*** of the land to support the requested variance.
- 1.7** The primary justification noted by the applicant relates to self-imposed hardships, such as remodeled expansion of the house, replacing the carport by two car wide garage and not exploring other options like tandem garage or even different location. The house was constructed in 1979 and the ownership changed to the current owners in 1993. Since then various additions and interior remodeling were made and the current situation is self imposed, and not to unique

**Board of Adjustment Meeting
March 10, 2009**

conditions of the land that prevent compliance with setback requirements. Review of Building permit records indicates that in 1995 permit # 103352 was issued for 852 square feet of additional livable space and 210 square feet of garage with interior remodeling was approved. The site plan submitted with the permit shows a proposed garage with 10 feet required building setback along north property line. However the proposed 210 square foot garage was not built. The existing carport is shown for the first time in 2002 aerial photos published by Maricopa County, however it seems there is no record of a building permit issued by the City of Mesa. Due to the size of the parcel, options are available to the applicant to redesign or relocate the proposed garage within the buildable area. The neighbor's properties to the north and south of the subject property show evidence of flexible design options.

**Board of Adjustment Meeting
March 10, 2009**

Case No.: BA09-015

Location: 2152 East Calle Maderas

Subject: Requesting a Variance to allow a garage addition to encroach into the required rear and side yards in the R1-9-PAD zoning district.

Decision: Continued for 60 days to the May 12, 2009 hearing.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Sullivan to continue case BA09-015 for 60 days to the May 12, 2009 hearing.

Vote: Passed 6-0

Findings: N/A

Respectfully submitted,

Angelica Guevara
Senior Planner
Secretary, Board of Adjustment

Minutes written by Mia Lozano-Helland, Planning Assistant

G:\Board of Adjustment\Minutes\2009 Minutes\03 March.doc